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FEB 06 2009

OFFICE OF PETITIONS

In re Application of :
Munoz et al. :
Application No. 09/752,656 : LETTER REGARDING
Filed: December 29, 2000 : PATENT TERM ADJUSTMENT
Attorney Docket No. 00140 :

This letter is in response to the "COMMUNICATION REGARDING PATENT TERM ADJUSTMENT", filed on September 10, 2008. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. §154(b) be reviewed for accuracy.

The request for correction of the patent term adjustment (PTA) is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) at the time of the mailing of the Notice of Allowance is 145 days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On June 23, 2008, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. §154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is one hundred ninety-six (196) days.

The Office determined a patent term adjustment of one hundred ninety-six (196) days based on an adjustment for PTO delay of three hundred twenty-three (323) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. §1.703(a)(1), and fifty (50) days pursuant to 35 U.S.C. 154(b)(1)(A)(ii) and 37 CFR § 1.703(a)(3), reduced by twenty-nine (29) days, fifty-seven (57) days, and

ninety-one (91) days of applicant delay pursuant to 37 C.F.R. § 1.704(b).¹

Applicants filed the instant "COMMUNICATION REGARDING PATENT TERM ADJUSTMENT" on September 10, 2008. Applicants request the Office verify the calculation of the patent term adjustment.

A review of the record reveals that Applicant should have been assessed an additional delay of fifty-one (51) days. On February 15, 2001, a Notice to File Missing Parts of Nonprovisional Application was mailed, requiring an executed oath or declaration and surcharge for its late filing. On July 5, 2001, three (3) months and fifty-one (51) days after the mailing of the Notice to File Missing Parts, a declaration and surcharge were filed.

37 CFR 1.704(b) states that with respect to the grounds for adjustment set forth in §§ 1.702(a) through (e), and in particular the ground of adjustment set forth in § 1.702(b), an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed. The period, or shortened statutory period, for reply that is set in the Office action or notice has no effect on the three-month period set forth in this paragraph.

Therefore, Applicants should have been assessed a reduction in patent term adjustment for the period of delay from May 16, 2001, (the day after the day three (3) months from the date that

¹ It is noted that on October 18, 2005, a Notice of Non-Compliant Amendment (37 CFR 1.121) was mailed, stating that the amendment filed on September 30, 2005, is considered non-compliant. On October 19, 2005, however, a non-final Office action was mailed. On October 25, 2005, an amendment entitled "Response to Notice of Non-Compliant Amendment" was filed. Since an Office action was mailed prior to the filing of a response to the Notice of Non-Compliant Amendment, however, the reply is considered an acceptable reply, and no reduction in patent term adjustment will be assessed.

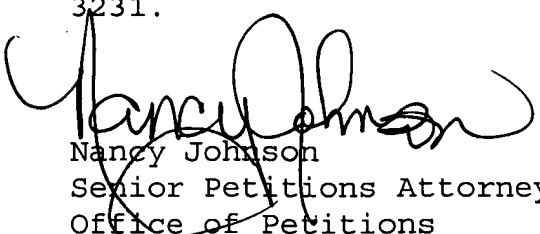
the Notice to File Missing Parts was mailed on February 15, 2001), to July 5, 2001 (the date the reply was filed), or 51 days.

In view thereof, the correct determination of PTA at the time of the mailing of the Notice of Allowance is **one hundred forty-five (145) days** (373 days of PTO delay, reduced by 228 (177+51) days of Applicant delay). To the extent that applicants are aware of any specific error in the PTA calculation, applicants should so advise the Office.

As this letter was submitted as an advisement to the Office of an error in applicants' favor, the Office will not assess the \$200.00 fee under 37 CFR 1.18(e). The Office thanks applicants for their good faith and candor in bringing this to the attention of the Office.

The application is being forwarded to the Office of Data Management for issuance of a patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this matter should be directed to Douglas I. Wood, Senior Petitions Attorney, at (571) 272-3231.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of Revised PALM screen

Day : Thursday

PALM INTRANET

Date: 2/5/2009

Time: 18:29:12

PTA Calculations for Application: 09/752656

Application Filing Date:	12/29/2000	PTO Delay (PTO):	373
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	177
Post-Issue Petitions:	0	Total PTA (days):	145
PTO Delay Adjustment:	-51		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
106	02/05/2009	ADJUSTMENT OF PTA CALCULATION BY PTO		51	
98	06/23/2008	MAIL NOTICE OF ALLOWANCE			
97	06/20/2008	ISSUE REVISION COMPLETED			
96	06/20/2008	DOCUMENT VERIFICATION			
95	06/20/2008	EXAMINER'S AMENDMENT COMMUNICATION			
94	06/20/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
93	06/20/2008	NOTICE OF ALLOWABILITY			
90	06/13/2008	DATE FORWARDED TO EXAMINER			
89	06/10/2008	AMENDMENT AFTER FINAL REJECTION			
88	03/21/2008	MAIL FINAL REJECTION (PTOL - 326)			
87	03/17/2008	FINAL REJECTION			
86	01/08/2008	DATE FORWARDED TO EXAMINER			
85	12/12/2007	RESPONSE AFTER NON-FINAL ACTION			
84	10/05/2007	CASE DOCKETED TO EXAMINER IN GAU			
83	09/25/2007	MAIL NON-FINAL REJECTION	50		76
82	06/25/2007	NON-FINAL REJECTION			
81	06/25/2007	MAIL MISCELLANEOUS COMMUNICATION TO APPLICANT			
80	04/18/2007	MISCELLANEOUS COMMUNICATION TO APPLICANT - NO ACTION COUNT			
79	04/18/2007	CORRESPONDENCE ADDRESS CHANGE			
78	04/18/2007	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
77	04/18/2007	DATE FORWARDED TO EXAMINER			
76	04/06/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)			

75	04/18/2007	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
74	04/18/2007	DATE FORWARDED TO EXAMINER			
73	04/06/2007	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
72	04/06/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
71	10/09/2006	NOTICE OF APPEAL FILED		91	69
70	10/09/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
69	04/10/2006	MAIL FINAL REJECTION (PTOL - 326)			
68	04/03/2006	FINAL REJECTION			
67	01/31/2006	RECEIPT OF ALL ACKNOWLEDGEMENT LETTERS			
66	01/31/2006	RECEIPT OF ACKNOWLEDGMENT LETTER			
65	01/24/2006	DATE FORWARDED TO EXAMINER			
64	01/19/2006	RESPONSE AFTER NON-FINAL ACTION			
63	11/21/2005	MAIL NON-FINAL REJECTION			
62	11/16/2005	NON-FINAL REJECTION			
61	10/25/2005	NEW OR ADDITIONAL DRAWING FILED			
60	11/02/2005	DATE FORWARDED TO EXAMINER			
59	10/25/2005	RESPONSE AFTER NON-FINAL ACTION			
58	10/19/2005	MAIL NON-FINAL REJECTION			
57	10/17/2005	NON-FINAL REJECTION			
56	10/17/2005	DATE FORWARDED TO EXAMINER			
55	09/02/2005	RESPONSE AFTER NON-FINAL ACTION			
54	10/18/2005	MAIL NOTICE OF INFORMAL OR NON-RESPONSIVE RCE AMENDMENT			
53	10/13/2005	NOTICE OF INFORMAL OR NON-RESPONSIVE RCE AMENDMENT.			
52	10/06/2005	DATE FORWARDED TO EXAMINER			
51	09/30/2005	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
50	10/06/2005	DATE FORWARDED TO EXAMINER			
49	09/30/2005	REQUEST FOR CONTINUED EXAMINATION (RCE)			
48	10/06/2005	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
47	09/30/2005	WORKFLOW - REQUEST FOR RCE - BEGIN			
46	09/20/2005	MAIL ADVISORY ACTION (PTOL - 303)			
45	09/16/2005	ADVISORY ACTION (PTOL-303)			

75	04/18/2007	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
74	04/18/2007	DATE FORWARDED TO EXAMINER			
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61	10/25/2005	NEW OR ADDITIONAL DRAWING FILED			
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57	10/17/2005	NON-FINAL REJECTION			
56	10/17/2005	DATE FORWARDED TO EXAMINER			
55	09/02/2005	RESPONSE AFTER NON-FINAL ACTION			
54	10/18/2005	MAIL NOTICE OF INFORMAL OR NON-RESPONSIVE RCE AMENDMENT			
53	10/13/2005	NOTICE OF INFORMAL OR NON-RESPONSIVE RCE AMENDMENT.			
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51	09/30/2005	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
50	10/06/2005	DATE FORWARDED TO EXAMINER			
49	09/30/2005	REQUEST FOR CONTINUED EXAMINATION (RCE)			
48	10/06/2005	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
47	09/30/2005	WORKFLOW - REQUEST FOR RCE - BEGIN			
46	09/20/2005	MAIL ADVISORY ACTION (PTOL - 303)			
45	09/16/2005	ADVISORY ACTION (PTOL-303)			

44	09/02/2005	NEW OR ADDITIONAL DRAWING FILED			
43	09/14/2005	DATE FORWARDED TO EXAMINER			
42	09/02/2005	AMENDMENT AFTER FINAL REJECTION			
41	06/30/2005	MAIL FINAL REJECTION (PTOL - 326)			
40	06/27/2005	FINAL REJECTION			
39	04/19/2005	DATE FORWARDED TO EXAMINER			
38	04/13/2005	RESPONSE AFTER NON-FINAL ACTION		57	36
37	04/13/2005	REQUEST FOR EXTENSION OF TIME - GRANTED			
36	11/15/2004	MAIL NON-FINAL REJECTION			
35	11/01/2004	NON-FINAL REJECTION			
34	08/25/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
33	08/25/2004	DATE FORWARDED TO EXAMINER			
32	08/06/2004	RESPONSE AFTER NON-FINAL ACTION			
31	08/06/2004	WORKFLOW INCOMING AMENDMENT IFW			
30	05/06/2004	MAIL NON-FINAL REJECTION			
29	05/03/2004	NON-FINAL REJECTION			
28	01/23/2004	MAIL MISCELLANEOUS COMMUNICATION TO APPLICANT			
27	05/04/2004	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
26	01/22/2004	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
21	01/23/2004	MISCELLANEOUS COMMUNICATION TO APPLICANT - NO ACTION COUNT			
20	01/15/2004	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
19	07/29/2003	MAIL FINAL REJECTION (PTOL - 326)			
18	07/28/2003	FINAL REJECTION			
17	05/20/2003	DATE FORWARDED TO EXAMINER			
16	05/16/2003	RESPONSE AFTER NON-FINAL ACTION		29	14
15	05/16/2003	REQUEST FOR EXTENSION OF TIME - GRANTED			
14	01/17/2003	MAIL NON-FINAL REJECTION	323		-1
13	01/13/2003	NON-FINAL REJECTION			
12.7	11/19/2001	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
12	11/19/2001	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			

11	11/26/2001	CASE DOCKETED TO EXAMINER IN GAU			
10	11/09/2001	REFERRED BY L&R FOR THIRD-LEVEL SECURITY REVIEW. AGENCY REFERRAL LETTER GENERATED			
9	08/17/2001	APPLICATION DISPATCHED FROM OIPE			
8	02/15/2001	APPLICATION IS NOW COMPLETE			
7	02/15/2001	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
6	02/08/2001	CORRESPONDENCE ADDRESS CHANGE			
5	02/08/2001	CORRESPONDENCE ADDRESS CHANGE			
4	02/07/2001	CORRESPONDENCE ADDRESS CHANGE			
3	02/07/2001	CORRESPONDENCE ADDRESS CHANGE			
2	01/17/2001	IFW SCAN & PACR AUTO SECURITY REVIEW			
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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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